



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF W-V-

DATE: NOV. 18, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an announcer and a voiceover artist, seeks classification as an individual “of extraordinary ability” in the field of “media talent.”¹ *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief, asserting that he meets the criteria listed under 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), and (viii). For the reasons discussed below, the Petitioner has not established his eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if –

¹ On appeal, the Petitioner states that “Media Talent includes the following methods to showcase the Petitioner’s media talent: voiceover media specialist, radio announcer, media programming, radio programming, writer, commentator, and radio show director” and “anything to do with the Petitioner’s voice and the dissemination of his ideas and vocal talents to the public.”

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not asserted or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he must provide at least three of the ten types of documentation listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

² We have reviewed all of the evidence the Petitioner has filed and will address those criteria the Petitioner asserts he meets or for which he has submitted relevant and probative documentation.

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Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner asserts that he meets this criterion because of his receipt of [redacted] awards and that he received the awards "because [of his] excellence in the field as a Media Talent." The Petitioner received a number of [redacted] awards, including the [redacted] and [redacted] Awards, and the [redacted] and [redacted] Awards. According to [redacted] Director, it is "a Radio and TV School for Professional Technical Qualification," where the Petitioner had taught a broadcasting course. Online materials noted that the school offers "courses focused on professional training in radio, in the fields of voiceover, sound design, production assistant and studio, illuminator and camera operator." The filing that the Petitioner submitted in response to the Director's request for evidence (RFE) indicated that the purpose of the [redacted] awards was "to support the spreading of [the company's] products such as courses and lectures." The documents stated that the awards aimed to "give prestige and . . . public recognition [to] the voice professional [who] is dedicated and invest[ed] in a career in a constant way and contributes to the success of the professional and the communication market as a whole."

The Petitioner has not verified that individuals or entities unaffiliated with [redacted] recognize the accolades as prizes or awards for excellence in the field. While the Petitioner submitted reference letters, none of them, including the one from [redacted] mentioned the [redacted] awards in general or the Petitioner's receipt of awards from this entity. The record lacks evidence demonstrating that the awards from an institution where he taught garnered any media attention on a national or international level. Without documentation of the awards' recognition outside of [redacted], the Petitioner has not established his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Petitioner does not satisfy this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The Petitioner asserts that he meets this criterion based on an [redacted] article entitled "[The Petitioner]: [redacted] a [redacted] article entitled [redacted] [redacted] article; a [redacted] article entitled [redacted] a [redacted] and an article entitled [redacted] [the Petitioner], [redacted] [redacted] posted on [redacted] blog. The Petitioner has not shown that he satisfies this criterion because he has not proved that the abovementioned general interest publications and television program constitute major media.

[redacted] is published three times weekly, with a regional circulation in Brazil. The Petitioner submitted documents showing that the publication has a number of distribution points, and is

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“[d]rawing 40 thousand copies.” [REDACTED] which also publishes [REDACTED] is a foreign language publication, published in [REDACTED] Georgia. The Petitioner did not provide information relating to these publications’ circulation or readership, or confirm that the circulation and readership is at a level consistent with a finding of major media. The Petitioner has not demonstrated that “[d]rawing 40 thousand copies” is [REDACTED] circulation or that a monthly circulation of 40,000 copies is indicative of the publication’s status as major media in a region with a population of two million, according to the Petitioner. Although the Petitioner filed an online printout from [REDACTED] reflecting that it has a monthly circulation of 50,000 copies, the record does not establish that this monthly circulation level is sufficient to qualify the magazine as major media.

Similarly, the Petitioner has not shown that his appearance on [REDACTED] meets this criterion. According to the English translation entitled “About – [REDACTED] was a late-night [REDACTED] television program that [REDACTED] hosted. The program included a [REDACTED] 2013, episode called [REDACTED] [The Petitioner] and [REDACTED]. The record contains no evidence relating to the reach or viewership level of [REDACTED] or [REDACTED] from which we may determine if the television station or program constitutes major media. The Petitioner indicated in his initial filing that a *Wikipedia* printout proved that the television station was major media. As there are no assurances about the reliability of the content from this open, user-edited Internet site, *Wikipedia* materials have limited evidentiary value and do not establish the Petitioner eligibility for the exclusive classification.³ See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

Finally, the record does not demonstrate that [REDACTED] blog is a professional or major trade publication or other major media. The record lacks information about the nature or subject matter of the website, which is relevant to our determination of whether the blog is a professional or major trade publication. On appeal, the Petitioner references an English translation of the blog’s traffic record, which the Petitioner provided in response to the RFE. The translation indicates that the blog had the following “visualization” numbers: 95 on [REDACTED], 2014; 507 in [REDACTED] 2014; and a total of 50,890 as of [REDACTED] 2015. The Petitioner, however, has not presented the

³ Online content from Wikipedia is subject to the following general disclaimer entitled “WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY”:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

. . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on November 13, 2015, a copy of which is incorporated into the record of proceeding.

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original foreign language document. In addition, the English translation is insufficient to show that the blog, with a limited number of daily and monthly views, constitutes major media. The Petitioner also has not provided the start date of the blog to place its total “visualization” numbers in context. As the Petitioner has not filed sufficient evidence relating to the publications or television program, the Petitioner has not submitted published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. He does not satisfy this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The Petitioner asserts that he meets this criterion because his work with the Facebook group [REDACTED] “led to the creation of a new agency that is establishing the rules and regulations for the field of voice specialists and announcers in Brazil” and that this organization is authorized to operate in Brazil. The Petitioner states that the entity “is of major significance in the [Petitioner’s] field because it establishes the rules and regulations under which the field will be governed following the creation of the government organization.” To meet this criterion, the Petitioner’s contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term “original” and the phrase “major significance” are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). The Petitioner’s contributions must be original, such that he is the first person or one of the first people to have done the work in the field, and must show that his contributions are of major significance in the field, such that his work significantly advanced the field as a whole.

Although the record shows that the Petitioner took part in creating both the Facebook group [REDACTED] there is insufficient evidence demonstrating that either organization has impacted the field at a level consistent with a finding of contributions of major significance. [REDACTED] provided that she, along with the Petitioner and others, created [REDACTED], “a closed group of announcers and related [professionals] on Facebook, in order to engage and bring together professionals in the area of Radio and TV” She noted:

[T]he [REDACTED] group embraced the cause and then promoted, in October 2013, the creation of [REDACTED] – [REDACTED] – which aims primarily to be the spokesperson for the creation of rules and regulations for the profession, framing the entire circle – announcers, agencies, producers and customers, the rules preventing the trivialization of the professional.

[REDACTED] letter provided information on the purposes and goals of both [REDACTED]. She also acknowledged, however, that she and others cannot yet feel the impact of either

⁴ If [REDACTED] is an acronym, the record does not contain the complete name of this entity and we were unable to locate it online.

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organization, although she believed that the potential for an impact exists. To meet this criterion, the Petitioner must establish that his work has already impacted the field at a level consistent with contributions of major significance, which the letter does not demonstrate.

Similarly, other reference letters in the record do not show that the Petitioner meets this criterion. [REDACTED], a journalist and professional broadcaster, indicated that the Petitioner established [REDACTED], a private Facebook group, to provide a forum for participants to discuss and suggest ideas to improve the professional broadcast field and that the participants “have had the opportunity to conduct some businesses together, linked to broadcasting work and professional improvement, which involved training, market updates, studio and equipment improvements.” [REDACTED] further noted:

[The Petitioner and she] are engaged in creating a new regulatory department to regulate [their] profession in Brazil (it is under registration and moving forward to establish its statute), which will significantly contribute for an improved professionalization of the voice professions and as a result [the professionals] will have a greater appreciation and acknowledgment of [the] profession to clients, production agencies, and communication media.

Neither [REDACTED] letter nor any other filings, however, document the impact that [REDACTED] and [REDACTED] already had in the field. Rather, the evidence focuses on the potential of both organizations, which is insufficient to meet this criterion. A letter from [REDACTED] President of the [REDACTED] did state that the Petitioner “has helped strengthen the collective in the media, that, thanks to the group of discussions on Facebook as Speakers platform, for example, where serious professionals with years of experiences share their experiences and show paths to young communicators.” The Petitioner has not demonstrated that providing a forum for professionals in the field to discuss ideas and share experiences constitutes contributions of major significance. Specifically, the record does not establish that the Petitioner’s formation of [REDACTED] has significantly advanced the field as a whole.

The record includes other reference letters that praise the Petitioner’s ability and character in general terms. For example, [REDACTED] a radio and TV announcer, stated that the Petitioner is a “leader committed to the individual[’s] growth.” [REDACTED] an announcer, noted that the Petitioner did a “masterful job” in coaching others because he could explain “clearly and simply things that take years for [others] to learn.” [REDACTED] of [REDACTED], a sound production company, indicated that the Petitioner “is a professional who is a reference to a generation of speakers in Brazil,” and whose “services have provided a great relevance to the Brazilian Market.” [REDACTED] and [REDACTED], owners of [REDACTED] an audiovisual and movie production company, mentioned that their clients most frequently requested the Petitioner’s service. Professor [REDACTED] a poet and university professor, asserted that the Petitioner “is a competent and versatile professional” and is “highly recommended as a broadcaster professional and as a human being.” None of these letters, however, explicitly

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referenced what the Petitioner has done that constitutes original contributions of major significance in the field as a whole, as required under the plain language of the criterion.

Solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁵ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not include details on contributions of major significance in the field).

We have considered all the reference letters, including those not specifically mentioned. The reference letters do not establish that the Petitioner's accomplishments constituted contributions of major significance in the field. In light of the above, the Petitioner has not documented his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. He does not satisfy this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Petitioner asserts that he meets this criterion because he "has played a critical role in several organizations with distinguished reputations, including [REDACTED] and for [REDACTED] and because he has "played a leading role in creating the new regulatory agency for Brazilian voice specialists and announcers." While not all of the Petitioner's statements are supported by the record, his employment with the [REDACTED] demonstrates that he meets this criterion.

Specifically, a January 2015 letter from [REDACTED] provided that the Petitioner is [REDACTED] main Broadcasting Announcer and Standard Voice for all series and programs,

⁵ In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the Petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

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in Portuguese speak countries” and that he “has been in charge of delivering all non-programming [redacted] content, promotions, advertising and some institutional jobs.” An undated letter from [redacted] Portuguese Language Coordinator, [redacted] verified that the Petitioner has been one of the station’s main broadcasters since 1997. The record indicates that [redacted] of Brazil, part of the [redacted] Company, owns the [redacted], [redacted], Cross Platform Producer, Image and Sound, [redacted] confirmed that since 1997, the Petitioner has been “a Voice Over Talent of [redacted], one of the most important network companies in the world.” [redacted] noted that [redacted] is “one of the first and most important pay TV stations in Brazil.” [redacted] confirmed that the [redacted] is “one of the most successful channels . . . in the demanding Brazilian market,” and it has maintained “the high international quality standards that [redacted] represents worldwide.” Accordingly, the Petitioner has documented that he has performed in a leading or critical role for [redacted]. He satisfies this criterion.⁶

B. Summary

The Petitioner has been working in the broadcasting field as an announcer and voiceover artist for a number of years. In addition, he has been teaching broadcasting classes and providing an online forum for professionals in the field. Based on the record, and for the reasons discussed above, however, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, documentation that satisfies at least three of the ten regulatory criteria. In addition, having considered all the filings, we conclude that the Petitioner has not shown his eligibility for the exclusive classification.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the submissions in the context of whether or not he has achieved: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the [Petitioner] has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that he has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate

⁶ Having found that the Petitioner’s employment with [redacted] meets this criterion, we need not consider his involvement with other entities that he asserts also meets this criterion.

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supports a finding that the Petitioner has achieved the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of W-V-*, ID# 14538 (AAO Nov. 18, 2015)